

Claim 3 has been corrected to eliminate improper periods at the end of the sentences, eliminate the spaces between the paragraphs and to replace "or line" by "on line" in line 31.

### **3 Claim rejections – 35 USC 112**

Claim 3 has been corrected to eliminate the limitation "the customer and the producer, the reproducer environment, the source channel" in lines 2,4 and 9.

### **4 Claim rejection – 35 USC 103**

#### **4.1 Examiner Arguments:**

*According the examiner " Sitnik" does not explicitly disclose a multichannel record by mixing and combining the source channels applying audio techniques but not limited to amplification, attenuation.. but Nakamura is cited to show that the concept of creating a new multichannel record by mixing and combining the source channels applying audio techniques....to fit a previous selection..... an apply specific customization parameters from the customer music reproduction device".*

*Then the examiner concludes that "it would be obvious to one on the ordinary skill in the art at the time the invention was made to utilize the mixing and combining the source channels as taught by Nakamura into the system of Sitnik because it would improve the sound quality and the sound image perceived by those who are sitting in the room the sound where the sound is being reproduced".*

#### **4.2 SITNIK US 6,300,880**

Sitnik discloses a "MULTICHANNEL AUDIO DISTRIBUTION SYSTEM HAVING PORTABLE RECEIVERS". Sitnik idea, in example, when applied to a music record store, will allow the store to supply each customer that walk in a wireless device with an optical reader in it. Then if the customer wants to preview a particular record by means of this device could hear a "45 seconds" full stereo sample of it. According Sitnik this will be possible because the device could retrieve the record ID with the optical reader, then wireless transmit this ID to a central device. With this ID the central device will locate the record and transmit back the music sample using one of multiple short-range radio channels available.

#### **4.3 NAKAMURA US 6,687,378**

Nakamura discloses a VEHICLE MOUNTED ACOUSTIC SYSTEM. Nakamura idea was to adapt surround records done following the 5.1 industry standard to a vehicle. What Nakamura proposes in order to improve the reproduction quality

perceived in the interior of a vehicle of 5.1 records is the mixing of the left front channel with the left rear channel and the right front channel with the right rear channel. 5.1 Records have 5 fix channels, left front, left rear, central front, right front and right rear. The Nakamura approach considers that the listener position is different in a vehicle that in a home theater, then the vocal components that for home theater reproductions are in general at the front speakers will be perceived better if also are present in the rear speakers.

## **5 Arguments**

### **5.1 Arguments on Nakamura**

According the examiner *“Nakamura is cited to show that the concept of creating a new multichannel record by mixing and combining the source channels applying audio techniques....to fit a previous selection..... an apply specific customization parameters from the customer music reproduction device”*.

There is no logical or evident connection in between what NAKAMURA discloses and the business model proposed, the different approaches are analyzed below.

#### **5.1.1 Business Model versus Technology**

The business model proposed is in now way anticipated by Nakamura, Nakamura proposes a particular way and system to improve the reproduction in vehicles of 5.1 records and apply audio techniques like the ones mentioned in the application 10/064,533 to improve the perceived quality of the listener.

The examiner declares that there is obviousness and anticipation in the use of audio techniques to reprocess a multichannel record to improve the perceived quality.

The key aspect of the application 10/064,533 is not the application of audio techniques to reproduce a multichannel record; this process is the mean to enable the sale of records with variable numbers of channels and optional customizations.

If reviewed from other point of view in no way app. 10/064,533 may infringe Nakamura, application 10/064,533 and Nakamura differences are shown in the following table:

<b>App. 10/064,533</b>	<b>Nakamura</b>
Business model to sale records with variable numbers of channels and customization options.	Way to improve the reproduction of 5.1 records in vehicles.
The sales process requires to recombine a multichannel (large amount of channels 16,32, 64, 128..) into a medium or large number of channels to fit a singular customer requirement.	The system proposed by Nakamura instead of reproduce the 5.1 records as it was meant to been reproduced it recombines the left and right channels output prior the signal arrives to the speakers to better fit a vehicle instead of a home theater.
The business model allows the customer to purchase a multichannel record with a variable number of channels mixed and combined according its preferences. A customized multichannel record.	The Nakamura system allow the user to reproduce a 5 channel record in which the listener can mix the front left with the rear left and the right front with the right left channels. Nakamura tell us that being the vocals components normally allocated in the front left and right channels then the listener experience can be improved if some of these vocal components are also in the rear speakers.

Initially application 10/064,533 was accompanied by application 10/064,534 that outlines a multichannel reproduction device with capacity to support a customized number of channels, after this application was abandoned because it not discloses any new technology and it was and obvious extension of the already in the market technologies.

Of course a multichannel reproduction device will be needed if any record company embraced the business model proposed in 10/064,533 but this can be easily developed on current technologies.

### **5.1.2 Common aspects in between Nakamura and 10/064,533 that may lead to misinterpretation.**

#### **Improvement of the listener perceived quality**

Nakamura and 10/064,533 seeks the improvement of the listener perceived quality, Nakamura technology proposes to create value by allowing the user to mix the right and left front and rear channels. 10/064,533 proposes to create value by means of not limiting the user to 2, 5 or seven fixed channels with an arbitrary audio components distribution in the channels, but by allow the user to participate and extend his requirement offering the customer the options to define how many

channels he wants and what type of audio components distribution will fit better his needs.

#### **Mix applying audio techniques of a multichannel Source.**

The above statement without the appropriate context fits very well Nakamura and 10/064,533, but when context is considered there are important differences.

Multichannel source, in Nakamura refers to a 5.1 record (A standard and public available DVD records in 5 channels) in 10/064,533 refers to a master studio record not available to the public that comprises a substantial larger amount of information and channels.

Mix applying audio techniques, in Nakamura refers to the combination of the right front and rear channel and the left front and rear channels. In 10/064,533 refers to the process of mix a large amount of channels to support the proposed business model of create a “single” and “singular” mix for a particular customer. A very high quality record mixed in as many channels as the customer wants with the audio components distribution requested by the customer.

#### **5.1.3 Conclusion of the examiner**

The examiner conclusion is that *“it would be obvious to one on the ordinary skill in the art at the time the invention was made to utilize the mixing and combining the source channels as taught by Nakamura...”*

The examiner is right in the appreciation that for is obvious for *one in the ordinary skill in the art to utilize the mixing and combining of the source channels...*but this conclusion is also applicable to Nakamura, if fact all the commercial music records available has been produced by mixing and combining source channels obtained at the record studios since the beginning of the industry.

What makes Nakamura acceptable is the way in which the technique of mixing and combining is used, same for the application 10/064,533, but there is no relation in the purpose for which the technique is used in Nakamura vs. the use in application 10/064,533 as explained before.

#### **5.2 Arguments on Sitnik and Nakamura or Sitnik alone**

The applicant cannot find a way in which combined the Sitnik system with the Nakamura system could lead to the proposed business model of 10/064,533.

In fact with Sitnik the unique possible relation is the word MULTICHANNEL in the title.

According the examiner “ *Sitnik*” *does not explicitly disclose a multichannel record by mixing and combining the source channels applying audio techniques but not limited to amplification, attenuation*”.

The Sitnik invention title could lead to misinterpretation, in fact MULTICHANNEL AUDIO DISTRIBUTION SYSTEM HAVING PORTABLE RECEIVERS can be easily related to the 10/064,533 title MULTICHANNEL MUSIC RECORDS BUSINESS METHOD if the titles are analyzed out of context.

But when analyzed in context there is no logical path in between the prior art disclosed by Sitnik and the one disclosed by 10/064,533. There is no direct relation in:

The way to create value, Sitnik improves the purchase experience allowing the customers to preview the music. 10/064,533 creates value enabling new purchasing options of music records for the customers.

The way multichannel are used, Sitnik uses radio multichannel to simultaneously transmit audio previews to various wireless receivers, 10/064,533 uses the multichannel as audio tracks.

The way customers interact with the system, Sitnik allow the customers to read the ID of a record through an optical device and then hear the preview controlling the volume and tone and being able to select Fast forward, reverse, next clip, previous clip, next disk, previous disk, pause, (Sitnik 6,300,880 paragraph 50). In 10/064,533 the customer interaction is to exercise options related to the way in with his customized multichannel record will be build.

## 6 Conclusions

Based on the presented arguments the applicant respectfully request that the office withdraw the obviousness rejection and proceed with the patent process.

In previous arguments presented to the office, an office patented business model Customer identification and marketing analysis system (patent 6070147) was referenced. This patent links the frequent buyer programs with government issued Ids and present some characteristics similar to the application 10/064,533, similarities are in example:

Technology obviousness: all the needed technology to make the idea works at the moment of the invention is available and in common use in the market

Business Solution obviousness: one disclosed both ideas are obvious.

The applicant respectfully request the examiner to concentrate the efforts in the potential value that the proposed invention can bring to the industry, the invention innovation relies there. As in the case of the patent 6070147 if the focus of the examiner is in how the technologies are employed then it will be always possible to found ground for rejection because technologies are only a media and this invention is not proposing a new technology.

At the moment of the invention disclosure the conditions in the world to support the proposed business model were just starting, conditions such as:

- Ability to transfer large amount of information, wide band internet with larger bandwidths and larger information transfers rates are deployed, currently is common to download music and movies. Multichannel records will require the transferring of very large amounts of information (similar to a MPEG movie).
- E-business models and transaction support infrastructure, the music industry is embracing the e-business model and supporting more and more the music download. Also the payment supporting systems are in place.
- Processing power at the customer site, customers PCs have more than enough processing power and storage capacity to support the file of very large music files (Such as customized multichannel records) and to run very sophisticated reproduction programs able to control large amounts of channels and devices.
- Customer education, there are lots of very popular software to create music in the home PCs, lot of potential customers understand the concepts of audio channels and audio processing, therefore are prepared to understand the advantages that the proposed business model of 10/064,533 offers.
- Decrease of the music perceived value, compression algorithms piracy and illegal downloads have decrease the perceived value of the original music, the business model proposed in 10/064,533 by means of create new purchasing options to the customers also offers new ways of increase the perceived value.

The applicant objective in disclose this invention to the office and obtain a patent is to become able to present this new business model to the media industry. The media industry has denied (in writing) to review any innovation and/or idea if is not protected by a patent, the argument that support this is that they not want to risk a conflict in between their internal research and development departments and independent inventors.

If the examiner accepts the arguments explained above, then the discussion may turn into how much is the value of the innovation. But this type of discussion is not for the office or the applicant to develop, finally the decision will be made by the

market, in the mean time the for the customers the options of purchase customized multichannel records is not available.